Fair Admissions Practices

Under Title VI of the Civil Rights Act, programs that receive federal funds must operate in a non-discriminatory manner. Harvard College, like most private institutions of higher education, accepts federal funds in the form of student aid. Harvard also uses race as one of many factors in its admissions process — a practice often referred to as affirmative action. The following case examines the balancing of Title VI and affirmative action as it relates to college admissions.

Students for Fair Admissions v. President and Fellows of Harvard College

The policy of affirmative action started with President Kennedy's 1961 Executive Order No.10925 to alleviate racial discrimination in hiring. The order required government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color or national origin." Soon similar policies evolved to include college admissions with the aim to increase minority and female representation to promote diversity and improve pay inequality.

Over the years affirmative action policies have been challenged in the courts several times. In the 1978 case of *Regents of the University of California v. Bakke*, the Supreme Court ruled against the use of a racial quota system but allowed the use of race as one factor among many to ensure a diverse student population.

Fast-forward nearly 20 years, in 1997 Barbara Grutter, a white resident, was denied admission to Michigan State Law School. She sued the school claiming the use of race as a deciding factor essentially functions as a racial quota. In *Grutter v Bollinger*, a majority of the court held for the first time that diversity in education can be a "compelling interest" to justify race-based classifications. Echoing the opinion in *Bakke*, the court ruled that race can be considered as one of several factors in admitting students. In the majority opinion written by Justice Sandra Day O'Connor, she stated, "race-conscious admissions policies must be limited in time," believing affirmative action policies would no longer be necessary to ensure diversity among students. More recently, the Court's ruling in *Fisher v. University of Texas* (2016) reaffirmed that diversity is a "compelling governmental interest."

The latest challenge to affirmative action in school admissions was brought by a group of Asian American applicants seeking to attend Harvard College. The group alleges that Harvard's race-conscious admissions policy favors white applicants and violates Title VI of the Civil Rights Act of 1964. Harvard contends their admissions policies follow the guidelines of "individualized inquiry" established in the Court's *Grutter v. Bollinger* decision. Arguments were heard by the Court on October 31, 2022, and its findings have yet to be announced.

Will the Court decide the time limit for current admissions practices is up and overturn affirmative action? If so, what new policies will ensure equal access for all students moving forward? While these questions are as yet unanswered, we trust the Court will do its best to apply the rule of law to the facts of the case in finalizing its decision.

Newspaper Activity: Look through the news, in print or online, for examples of current students' rights issues. Select one and prepare a summary of the who, what, where, when and why to share with your class.

Next installment: **Equal Rights — A Cornerstone of Democracy**

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